

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

No. 2:14-CV-01038-MJP

**AMAZON.COM, INC.'S
MOTION TO DISMISS**

NOTE ON MOTION CALENDAR:
Friday, October 3, 2014

ORAL ARGUMENT REQUESTED

AMAZON.COM'S MOTION TO DISMISS
(No. 2:14-CV-01038-MJP)

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I. INTRODUCTION

With this action, the Federal Trade Commission seeks to impose new standards to govern retroactively the now-common practice of “in-app purchasing” – purchasing digital content through games and other applications (“apps”) on mobile devices such as tablets and phones. The Complaint’s single count for “Unfair Billing of In-App Charges” under Section 5 of the FTC Act does not rely on the legal standard historically applied to “Unfair Billing” allegations under Section 5. Instead, it impermissibly seeks to change the law and asks the Court to apply those changes retroactively to “resci[nd] or reform[Amazon’s] contracts” and require “disgorgement of ill-gotten monies.” Because Congress has expressly limited the FTC’s right to engage in such “legislation by litigation,” and because the Commission fails to allege facts sufficient to state a claim under the correct legal standards, the Complaint should be dismissed.

The legal test for unfair billing is the same today as when Amazon launched its Appstore less than three years ago. To be unfair under Section 5, the charges at issue must be *unauthorized*. The Complaint nods superficially to the correct “authorization” standard, Compl. ¶¶ 8, 28-30, but its allegations reveal that the Commission seeks to hold Amazon to different and higher standards. The FTC alleges that parents are sometimes surprised by what children do with the mobile devices they entrust to them, and its solution is to change the law that governs parental authorization of children’s actions, a device user’s authorization of a charge, or both. Thus, instead of alleging facts necessary to state a claim that children did not have actual or apparent authority to incur charges on their parents’ accounts or that Amazon failed to obtain the user’s authorization for the in-app charges, the Commission contends that Amazon violated Section 5 because it did not override Amazon’s famous 1-Click purchasing method and obtain “express informed consent” from the parent *each time* a user who might be a child subsequently made an in-app purchase on the parent’s mobile device. *See, e.g.*, Compl. ¶ 33 (“In numerous instances, Defendant has billed parents and other Amazon account holders for children’s activities in apps that are likely to be used by children without having obtained the

1 *account holders' express informed consent.*") (emphasis added); *see also id.* ¶¶ 8, 27. That is
2
3 not, and has never been, the standard.

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5 As Congress directed explicitly with the addition of 15 U.S.C. § 45(n) to the FTC
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7 Act, the Commission may not impose that new standard in this action. Section 45(n) is clear:
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9 "The Commission shall have no authority . . . to declare unlawful an act or practice on the
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11 grounds that such act or practice is unfair unless the act or practice [1] causes or is likely to cause
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13 substantial injury to consumers which is [2] not reasonably avoidable by consumers themselves
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15 and [3] not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C.
16
17 § 45(n); *see* Compl. ¶¶ 32, 34. Because the Commission pled the wrong standard in
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19 contravention of that congressional direction and now impermissibly seeks to hold Amazon's
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21 past conduct to that new standard, the Complaint should be dismissed.

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23 Moreover, even were the Complaint not permeated by that fatal defect, its
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25 allegations and the documents it incorporates by reference, *id.* ¶¶ 15-23, demonstrate that the
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27 Commission has failed to establish that consumers suffered substantial injury, that the alleged
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29 harm was not reasonably avoidable by consumers, or that it was not outweighed by
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31 countervailing benefits to consumers or to competition.

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33 First, the allegations in the Complaint are insufficient to show substantial injury
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35 because they cannot support a finding of cognizable injury. Application of traditional common
36
37 law agency principles to the allegations and documents referenced in the Complaint
38
39 demonstrates that the in-app purchases at issue were authorized by Amazon account holders.
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41 The FTC does not dispute, and indeed its own allegations grudgingly concede, that parents
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43 authorized their children's app usage and that, at the time that each relevant app was
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45 downloaded, Amazon notified customers of the availability of in-app purchasing with 1-Click,
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47 whether they made those purchases themselves or allowed their children to use their devices.
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49 Amazon's Appstore Terms of Use also expressly notified customers that some apps offer in-app
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51 purchasing content, and its Conditions of Use informed parents that they are responsible for

1 charges incurred by children they entrust with their mobile devices should they not take the
2 additional precautions that Amazon made readily available for controlling a child's usage. As a
3 result, they suffered no cognizable harm, and the Complaint does not adequately allege
4 substantial injury.
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9 Second, the Complaint makes clear that parents can reasonably avoid in-app
10 charges before they occur in numerous ways, including by using parental controls, supervising
11 children's usage, or selecting apps for their children that do not offer in-app purchasing. From
12 the inception of its Appstore, Amazon provided its parent-customers with reasonable tools to
13 avoid authorized charges that they might regret if they gave their device to their children,
14 including the ability to block in-app purchasing altogether. A notice in the product detail page of
15 every app that offers in-app purchasing discloses the possibility of in-app purchases as well as
16 the ready availability of parental controls. And Amazon has continued to iterate on and improve
17 the range of controls available to parents. Moreover, parents have always had the option to avoid
18 any injury from a purchase they regret simply by seeking a refund from Amazon through
19 Amazon's customer service. Indeed, the Complaint not only fails to allege that any customer
20 was denied a refund for a regretted in-app charge, but Amazon provided each customer
21 referenced in the Complaint with a full refund. None was harmed.
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35 Third, the Complaint's bare recitation that the alleged harm to consumers
36 outweighs countervailing benefits to other Amazon customers and competition does not satisfy
37 modern pleading standards. Among other things, the new standard the Commission seeks to
38 impose on Amazon – requiring re-entry of a customer's password to complete each individual
39 digital purchase – would eliminate the benefit of seamless 1-Click purchasing for the majority of
40 consumers who prefer streamlined online purchasing across Amazon's digital catalog of books,
41 movies, games, and other items. The Complaint also avoids altogether the common-sense
42 conclusion – reflected in the correct statutory standard – that the benefits to consumers and
43 competition of iterative development of the in-app marketplace may well outweigh any harm to
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1 consumers who either did not appreciate Amazon's several notices regarding the availability of
 2 in-app purchasing or failed to take advantage of Amazon's parental controls and post-purchase
 3 mitigation options. The balancing of interests required by § 45(n) demonstrates that Amazon
 4 was not – nor should it have been – obliged to impose rigid controls to benefit a minority of
 5 consumers to the detriment of innovation that benefits the great majority of consumers and
 6 competition. Here, again, the Complaint's conclusory allegation is insufficient to satisfy the
 7 requirement of Rule 12(b)(6) to plead facts that support a claim for relief.
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 9

10 In any event, the Court should dismiss the request for injunctive relief because the
 11 Complaint is devoid of facts that would warrant the prospective relief the FTC seeks. To the
 12 contrary, even under its novel legal standards the FTC admits that as of June 2014 – before it
 13 filed the Complaint – Amazon had “change[d] its in-app charge framework to *obtain account*
 14 *holders' informed consent* for in-app charges on its newer mobile devices.” Compl. ¶ 27
 15 (emphasis added). Having conceded that Amazon is in compliance with even its new standard,
 16 and having no ground to allege bad faith by Amazon, there is no basis for injunctive relief.
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29 II. FACTUAL BACKGROUND

30 Amazon's Appstore, which launched in November 2011 and is accessible on
 31 Kindle Fire and Android devices, allows customers to view and download hundreds of thousands
 32 of apps for use on their mobile devices. *See* Compl. ¶¶ 6, 8-9. Apps allow device users to read
 33 books, watch movies, and play games; engage with social media; organize and manage their
 34 personal files; and perform the seemingly limitless range of other mobile electronic activities that
 35 app developers can invent. *See id.* ¶ 9. Certain apps allow customers to purchase additional in-
 36 app content and services during use for fees starting at \$0.99. *Id.* ¶ 11. The FTC does not
 37 contest that customers perceive such content as enhancing the app's operation – for example, by
 38 adding extra features or abilities to a game app – or that many customers want that enhancement
 39 immediately and without extra steps.
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As part of the initial set up of devices such as Amazon's Kindle Fire tablet, customers associate the device with an Amazon.com account and payment instrument. *See* Compl. ¶ 13. In doing so, customers accept the Amazon Conditions of Use and Appstore Terms of Use, both of which the Complaint incorporates by reference when it invokes Amazon's "stated policy" to suggest (incorrectly) that that policy prevents refunds for digital purchase. *See* Attachments A & B, respectively; *see also* discussion *infra* Part III.A. The Terms of Use inform customers that Amazon "may offer digital products for sale that are intended to be accessed or used within an App, such as additional or enhanced functionality, media content, or subscription access to content or services ('Amazon Sold In-App Products')." Attachment B, ¶ 2.3. The Complaint does not allege that Amazon can know when account holders entrust their device to another. That is why Amazon has always required in its Conditions of Use that the account holder accept responsibility for all charges on his or her account: "You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password." Attachment A ("Your Account"). Amazon makes its services subject to the further condition that, "Amazon does sell products for children, but it sells them to adults, who can purchase with a credit card or other permitted payment method." *Id.*

Billing and payment through their Amazon account, and in particular through Amazon's well-known 1-Click payment process, is the exclusive method consumers use to obtain and download paid content, including apps and in-app features. *See* Compl. ¶ 13; *see also* *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 73 F. Supp. 2d 1228, 1237-38 (W.D. Wash. 1999), *rev'd on other grounds* 239 F.3d 1343 (Fed. Cir. 2001) (finding 1-Click to be "legendary" and "popular with Amazon.com customers"). And Amazon has provided its customers the tools to limit in-app purchasing through their Amazon account. Prior to download of an app, Amazon notifies its customers which apps contain in-app purchasing and explains how to limit or avoid in-app purchasing by using parental controls Amazon makes available on all of its devices. *See*

1 Compl. ¶¶ 14-15. During the in-app purchase flow, Amazon warns users when in-app charges
 2 are about to be incurred and reminds them again after each purchase of the availability of
 3 parental control options. *See id.* ¶ 18. (Additional details of how in-app purchasing is
 4 established and implemented are set out in the context of the legal analysis in Parts III.B.2.a and
 5 III.B.2.b(i) below. Included in that discussion and in Attachments C-1 through C-3 are relevant
 6 screenshots, which the allegations in the Complaint incorporate by reference.) In addition,
 7 Amazon has taken an iterative approach to refining password requirements for in-app
 8 purchasing. Compl. ¶¶ 20-21. Finally, while the FTC claims that Amazon’s process for
 9 obtaining refunds for in-app purchases is “unclear and confusing,” *id.* ¶ 30, the Complaint
 10 nowhere alleges that any Amazon customer who requested a refund was denied one.¹

21 III. ARGUMENT

22 The FTC alleges that Amazon has violated Section 5 of the FTC Act, 15 U.S.C.
 23 § 45, based on billing practices applicable to in-app purchases by all account holders, including
 24 parents who provide their devices to their children to use. That claim is meritless. Because the
 25 Complaint is built upon the wrong legal standards and cannot meet essential elements of Section
 26 45(n), the Court should dismiss the Complaint under Rule 12(b)(6) for failure to state a claim.

33 A. Legal Standard for Motion to Dismiss

34 A complaint must contain sufficient allegations of fact to “state a claim for relief
 35 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). That
 36 standard requires “more than a sheer possibility that a defendant has acted unlawfully. . . .
 37 Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops
 38 short of the line between possibility and plausibility of entitlement to relief.’” *Ashcroft v. Iqbal*,

46 ¹ The Complaint also omits other important facts, such as the email Amazon immediately sends
 47 account holders confirming each in-app purchase, *see, e.g.*, Attachment D at 15-17, as well as Kindle FreeTime, an
 48 app Amazon developed that enables parents to exercise granular control over the books, apps, games, and videos
 49 they want their children to view, including the ability to completely block in-app purchasing. Because Amazon asks
 50 the Court to dismiss at the pleadings stage, this motion addresses only the allegations in the Complaint and the
 51 materials upon which it relies.

556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557). A court is not required to accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *See Twombly*, 550 U.S. at 555, 557 (“naked assertion[s],” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of action will not do”). And the Court’s review must be sensitive to the statutory context, *see id.* at 555-56, particularly, as here, where Congress has specifically sought to reign in an agency’s expansive reading of a statutory standard. 15 U.S.C. § 45(n); *see, e.g.*, 140 Cong. Rec. H6162-01 (daily ed. July 25, 1994) (Rep. Carlos Moorhead: “Taken as a whole, these new criteria defining the unfairness standard should provide a strong bulwark against potential abuses of the unfairness standard by an overzealous FTC . . .”). To avoid damage caused by “false positives,” the court may not accept inferences that make, for example, either procompetitive or anticompetitive outcomes only equally plausible. *Twombly*, 550 U.S. at 553-54 (discussing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 593 (1986) (the effect of mistaken inferences “is often to deter procompetitive conduct”)).

In addition, although a court’s review on a motion to dismiss is generally limited to the facts alleged in the complaint, the court may also consider “documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *accord Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010). Thus, a court need not “accept as true conclusory allegations which are contradicted by documents referred to in the complaint.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998); *see Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (incorporating by reference complete copies of websites where the complaint included only excerpts because “[i]n evaluating the context in which the statement appeared, we must take into account ‘all parts of the communication that are ordinarily heard or read with it’”) (internal citations omitted); *Haskins v. Symantec Corp.*, No. 13-CV-01834-JST, 2013 WL 6234610, at *1 n.1 (N.D. Cal. Dec. 2, 2013) (dismissing claims and taking judicial notice of webpages containing license agreement). The Court therefore may appropriately

consider complete copies of Amazon’s terms and conditions, webpages, and communications with customers referenced in the Complaint. *See* Compl. ¶¶ 15-23; Attachments A (Conditions of Use), B (Appstore Terms of Use), C (webpages), & D (communications). (Attachments A and B include copies of the versions in effect at the inception of the Appstore and the current, updated version. Quotations in the Motion are taken from the versions in effect at launch in November 2011.)

B. The Allegations in the Complaint Fail to State a Claim

The Complaint’s single count is for “Unfair Billing of In-App Charges.” Compl. ¶¶ 33-35. There is no contention that Amazon’s presentation of in-app purchasing to its customers or its billing for those purchases, including 1-Click, is deceptive. There is no fact-based allegation that Amazon failed to (1) obtain billing authorization at the time the account was activated on the device, (2) notify customers about in-app purchasing in the Appstore Terms of Use and on the detail page of every app with that functionality, or (3) warn customers of the consequences of authorizing a third party to use their device. The theory instead is that, because parents may regret what their children do with the devices entrusted to them, Amazon has a new and additional duty to obtain “express informed consent” from the parent each time a child (or anyone else to whom the account holder entrusts their device) seeks to incur in-app charges. *See, e.g., id.* ¶¶ 8, 19, 27, 33. The FTC Act contains no such requirement, however, and the Court should reject the Commission’s attempt to impose new and heightened standards retroactively.

1. The Complaint Should Be Dismissed Because the Commission Asks the Court to Hold Amazon to a New and Unjustified Legal Standard

a. The FTC Act Does Not Require Express Informed Consent Each Time a Charge Is Incurred to an Account

Congress, and by extension the FTC, has required “express informed consent” only for certain specific billing practices where Congress concluded that such a heightened standard was necessary to protect consumers. For example, in the Restore Online Shoppers’ Confidence Act (“ROSCA”), Pub. L. No. 111-345, § 4, 124 Stat. 3618, 3620 (codified at 15

1 U.S.C. § 8403), Congress provided that charges incurred through “negative option” marketing
2 (in which a seller interprets a customer’s silence as acceptance of renewal or some other offer)
3 are valid only if the consumer has given “express informed consent.” *See* 15 U.S.C. § 8403(2).
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5 Even in that unique context, however, Congress required express informed consent at the
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7 initiation of the relationship; it did not require additional consent or authorization for each future
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9 recurring charge. *See* 15 U.S.C. § 8403(3) (requiring “simple mechanisms for a consumer to
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11 stop recurring charges”).
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15 In-app purchasing is not negative option marketing; the FTC does not allege
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17 otherwise, nor could it, and this case cannot proceed on the basis of that distinct standard. What
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19 the ROSCA standard demonstrates unequivocally, however, is that Congress knows how to
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21 impose an “express informed consent” requirement when it believes that is the appropriate policy
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23 judgment. Had Congress wanted to impose that heightened standard for in-app purchases
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25 potentially made by children, it could have done so by express statutory action or by directing
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27 the FTC to promulgate a rule. Congress has not done so. Though the Commission has exercised
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29 rulemaking authority to require express informed consent for certain telemarketing transactions
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31 under the Telemarketing Sales Rule, *see* 16 C.F.R. § 310.4(a)(7), it has not engaged in any
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33 rulemaking regarding in-app purchasing, much less to impose the standard it seeks here. What
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35 the Commission may not do, as Congress has further directed in Section 45(n), is revise the
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37 governing standard in one-off actions against companies like Amazon that act in good faith to
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39 satisfy existing standards.
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41 The fact that neither Congress nor the Commission has lawfully imposed a
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43 heightened standard for in-app purchasing is all the more telling in light of Congress’s express
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45 direction that the FTC regulate certain other activities specifically directed at children. In the
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47 Children’s Online Privacy Protection Act of 1998 (“COPPA”), Congress directed the FTC to
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49 promulgate regulations that impose a heightened “verifiable” parental consent the first time
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51 personal information is collected from a child. 15 U.S.C. § 6502(b)(1). And even in that

context, where a heightened standard plainly governs the collection of potentially sensitive personal information of children, the rules the FTC promulgated require that verifiable consent be obtained only the first time such information is collected, not each subsequent time the merchant does so. *See* 16 C.F.R. § 312.5.² The requirements that the FTC seeks to impose through this lawsuit for in-app purchases are unmoored from any such congressional mandate and unchecked by any lawful rulemaking process. Absent either, the FTC cannot impose those new requirements here.

b. Prior Unfair Billing Cases Have Found Practices to Be Unfair Because Customers Never Authorized Transactions At All

Courts evaluating allegations of unfair billing under Section 5 have never required contemporaneous, express informed parental consent for each transaction. Generally – in stark contrast to the allegations here – the cases that do not involve deception involve charges that consumers *never authorized* at all, much less contemporaneously.

For example, in *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 982 (N.D. Cal. 2010), *aff'd*, 475 F. App'x 106 (9th Cir. 2012), a “rampant fraud” billed businesses and consumers via their telephone bills. A survey indicated that “nearly 97 percent of defendants’ ‘customers’ had *not* agreed to purchase defendants’ products.” *Id.* at 982, 1004. The court concluded that those extensive unauthorized charges constituted an unfair billing practice. *Id.* at 1003-04; *see also id.* at 1006-08 (applying express informed consent standard to claims under Telemarketing Sales Rule – i.e., not to unfair practices claim); *FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927, 938 (N.D. Cal. 2010) (granting preliminary injunction where “[t]he record supports a finding that Inc21’s sales and billing practices failed to adequately safeguard against the unauthorized billing of consumers”). Similarly, *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1191 (C.D. Cal. 2000), involved adult-oriented websites that “billed the credit and debit

² The FTC recently issued amendments that expand the scope of its implementing regulations under COPPA, including by making clear that the rules cover apps directed to children; even there it did not use its limited grant of congressional authority to cover in-app purchasing by children. *See* 76 Fed. Reg. 59,804, 59,807 (Sept. 27, 2011) (discussing COPPA’s coverage of apps).

1 card accounts of individuals from all over the United States *without authorization*.” Nearly half
 2 the consumers who complained of charges “did not have a computer and had not given their card
 3 numbers to anyone.” *Id.* The court concluded that defendants had stolen credit card numbers
 4 and “debited and charged card numbers without the cardholders’ authorization.” *Id.* at 1203; *see*
 5 *also FTC v. Wells*, 385 F. App’x 712, 713 (9th Cir. 2010) (affirming determination of unfair
 6 billing practice for processing of debit withdrawals that account holders did not authorize and
 7 concluding that “[c]arrying out unauthorized transactions [i]s an unfair practice”); *FTC v. Ideal*
 8 *Fin. Solutions, Inc.*, No. 2:13-cv-00143-JAD-GWF, 2014 WL 2565688, at *1, *5 (D. Nev. June
 9 5, 2014) (“[u]nauthorized charges to consumer credit cards and bank accounts may violate the
 10 FTC Act”). The practices deemed unfair in these cases, where substantial numbers of consumers
 11 were billed despite never authorizing any transaction with the vendor, cannot fairly be compared
 12 to the facts in this case, given the multiple notices Amazon provided before any in-app purchase
 13 and the many ways in which parents can monitor, limit, or eliminate the availability of in-app
 14 purchasing by their children on their devices.

15 Nor does this case involve obtaining authorization by misleading consumers.
 16 Courts have concluded that billing practices can be misleading if they obscure the fact that the
 17 consumer will be billed. For example, in *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048,
 18 1054, 1079 (C.D. Cal. 2012), the defendant’s website “created the net impression that consumers
 19 could order a free kit to learn how to sell products online,” when in fact they were signing up for
 20 a program with monthly charges unless affirmatively canceled. Similarly, in *FTC v. Crescent*
 21 *Publishing Group, Inc.*, 129 F. Supp. 2d 311, 313-15, 322 (S.D.N.Y. 2001), the court concluded
 22 that the FTC was likely to prevail on its allegations that defendants billed consumers without
 23 authorization, where defendants’ websites promised a “free tour” but instead began charging at
 24 an “inconspicuous” point in the tour. The FTC does not allege – nor could it allege in the face of
 25 the express notice of in-app purchasing in the Appstore terms and every relevant app detail page
 26 – that Amazon misled its customers about in-app purchasing.

1 The Court should dismiss the Complaint because the Commission has pled the
 2 wrong legal standard, unsupported by statute, rulemaking, or caselaw.
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 5 **2. The Complaint Should Be Dismissed Because Its Allegations**
 6 **Fail to Satisfy the Requirements of 15 U.S.C. § 45(n)**
 7

8 The FTC's ability to expand the law as it seeks to do here is strictly limited by a
 9 1994 amendment to the FTC Act codified as 15 U.S.C. § 45(n). Congress decreed that the
 10 Commission has "*no authority . . . to declare unlawful an act or practice on the grounds that [it]*
 11 *is unfair unless the act or practice [1] causes or is likely to cause substantial injury to consumers*
 12 *which is [2] not reasonably avoidable by consumers themselves and [3] not outweighed by*
 13 *countervailing benefits to consumers or to competition.*" 15 U.S.C. § 45(n) (emphasis added).
 14 Policy considerations alone "may not serve as a primary basis for" a determination of a new
 15 category of unfairness. *Id.* Before the Commission may impose a new policy for in-app
 16 purchasing, the plain language of Section 45(n) instead requires that the Commission assure that
 17 consumers cannot protect themselves from substantial injury and undertake the cost benefit
 18 analysis. The limited imposition by Congress of the express informed consent standard, *supra* at
 19 pp. 8-10, shows that no "established public policy" supports use of the standard here. *See*
 20 15 U.S.C. § 45(n) ("In determining whether an act or practice is unfair, the Commission may
 21 consider established public policies as evidence to be considered with all other evidence.").

22
 23
 24 **a. The Complaint Fails to Allege Facts Showing Substantial Injury**
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26 The allegations in the Complaint are insufficient to show substantial injury
 27 because they cannot support a finding of cognizable injury. Congress is presumed to legislate
 28 against the background of the common law, *see Meyer v. Holley*, 537 U.S. 280, 285 (2003), and
 29 there is no indication that Congress intended Section 5 to trump common law agency principles.
 30 Even as pled under an incorrect and impermissible legal standard, the Complaint does not
 31 dispute that under applicable common law standards the transactions at issue were authorized by
 32 Amazon account holders, and thus they suffered no cognizable harm.
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Under settled principles of agency law, a charge is “authorized” where the account holder knowingly provides to another person the instrument that results in the charge. That is the fundamental premise of the FTC’s allegations: a parent hands a child an electronic device knowing that the device can make charges to the parent’s account and that the parent is responsible for them. In particular, under Washington law – which governs the relationship between Amazon and its customers – an agent binds a principal to a contract as long as the agent has either actual or apparent authority. *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994); *accord* Restatement (Second) of Agency § 140 (1958). An agent has apparent authority whenever the acts of the principal cause a third person to reasonably believe that the agent has authority to act for the principal. *Ranger Ins. Co. v. Pierce Cnty.*, 164 Wn.2d 545, 555, 192 P.3d 886 (2008); *accord* Restatement (Second) of Agency § 27.

Basic agency law provides that “[a]ny person,” regardless of capacity to contract, may have the “power to act on behalf of another.” Restatement (Second) of Agency § 21(1). Even “an infant . . . or a person otherwise so incompetent that he cannot bind himself by a contract can bind one who appoints him to make a contract for him.” *Id.* cmt. a. That common law rule is even more important in online transactions, where the merchant cannot “see” the ultimate user of the device. Indeed, the Third Restatement, which sets out the same rule, illustrates the rule with an example of apparent authority strikingly similar to 1-Click: P permits her child to use P’s computer and “configured the computer such that, once the user is inside the website of T.com, a retailer of books, it is possible to order any particular book title by clicking on a button labeled ‘Buy It Now’.” Restatement (Third) of Agency § 3.05, cmt. b, illus. 1. By permitting her child access to the computer, “loaded as it is with the ‘Buy It Now’ feature, P has created the risk that A will use the feature [even] without P’s consent and without actual authority,” but with apparent authority. *See id.* cmt. b.

Under these principles, account holders who place in the hands of another the means to incur charges through their account – for example, by giving another person their credit

1 card or a device enabled to make online purchases through their account – vest the other person
 2 with at least apparent and usually actual authority to act as their agent. Though in hindsight they
 3 might sometimes regret the resulting charges, they authorized them. As the District of Columbia
 4 Court of Appeals has observed, “[n]early every jurisdiction that has addressed a factual situation
 5 where a cardholder voluntarily and knowingly allows another to use his card and that person
 6 subsequently misuses the card . . . has determined that the agent had apparent authority, and
 7 therefore was not an ‘unauthorized’ user.” *Stieger v. Chevy Chase Sav. Bank, F.S.B.*, 666 A.2d
 8 479, 482 (D.C. Cir. 1995) (internal quotation marks and citation omitted) (citing cases).
 9 Washington is one of those jurisdictions: “[I]n instances where a cardholder voluntarily permits
 10 the use of his credit card by another, he is liable for all uses of that card even though a particular
 11 charge may not have been contemplated by him.” *Mich. Nat’l Bank v. Olson*, 44 Wn. App. 898,
 12 904, 723 P.2d 438 (1986).

13 Congress has repeatedly approved that principle. *See, e.g.*, Truth in Lending Act,
 14 15 U.S.C. § 1602(p) (“the term ‘unauthorized use’ . . . means a use of a credit card by a person
 15 other than the cardholder who does not have actual, implied, or apparent authority for such use
 16 and from which the cardholder receives no benefit”); Electronic Fund Transfer Act, 15 U.S.C.
 17 § 1693a(12)(A) (“unauthorized electronic fund transfer” does not include any such transfer
 18 “initiated by a person other than the consumer who was furnished with the card, code, or other
 19 means of access to such consumer’s account by such consumer, unless the consumer has notified
 20 the financial institution involved that transfers by such other person are no longer authorized”).
 21 The Complaint identifies no contrary intent in the FTC Act, and there is none.

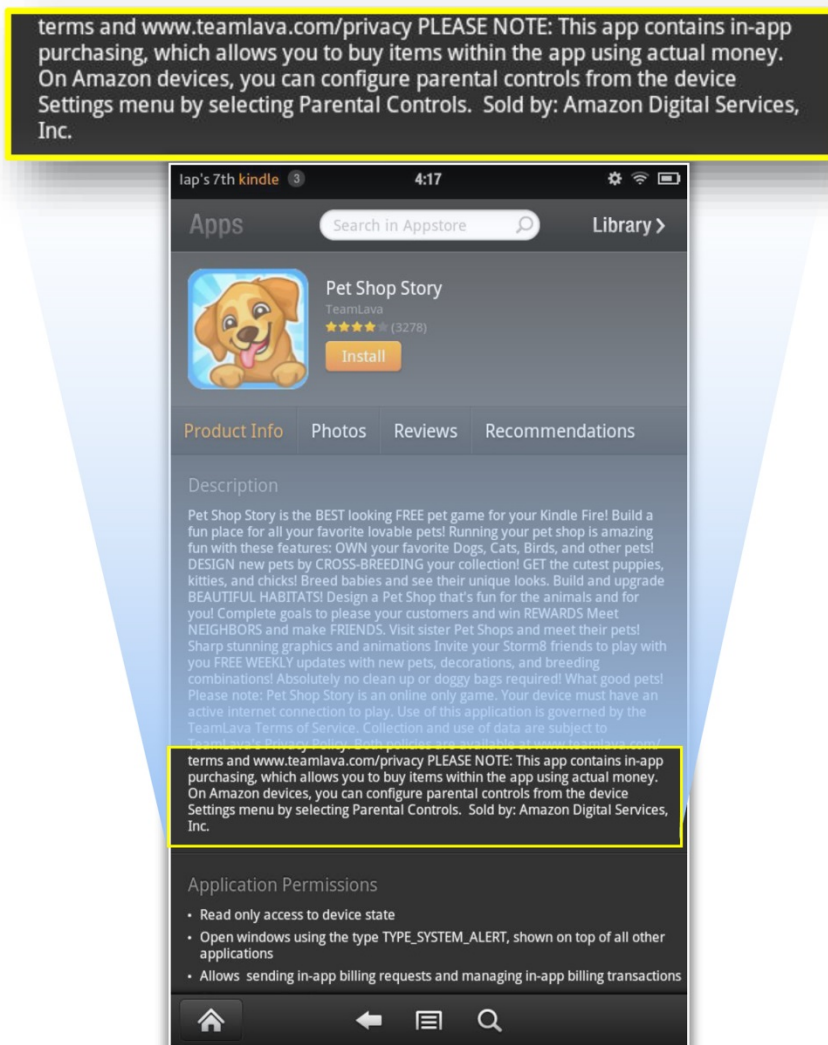
22 This principle applies fully where an account holder allows another person, even a
 23 child, to use a device that has been configured to allow electronic purchases. In *Imber-Gluck v.*
 24 *Google, Inc.*, No. 5:14-CV-01070-RMW, 2014 WL 3600506, at *4 (N.D. Cal. July 21, 2014),
 25 plaintiff sued Google on behalf of a class of parents and guardians whose minor children used
 26 Android devices to download apps that were either free or modestly priced, then incurred “in-

game” charges without their parents’ contemporaneous consent. The plaintiffs alleged that the apps were mostly games targeted to children that “induced” unwitting purchases of in-app products. *Id.* at *1. The district court concluded, in part, that under Google’s terms of service, the parent is “liable for the allegedly unauthorized purchases by her minor sons.” *Id.* at *4; *cf. Mollett v. Netflix, Inc.*, No. 5:11-CV-01629-EJD, 2012 WL 3731542, at *3 (N.D. Cal. Aug. 17, 2012) (rejecting plaintiffs’ privacy-based claims where disclosure of their information was to devices that plaintiffs affirmatively coupled with their accounts and plaintiffs could have restricted access to their device to prevent others from viewing that information). An account holder who links a payment account to an electronic device and then hands that device to another person without limiting that purchasing authority is authorizing the subsequent charges on that device.

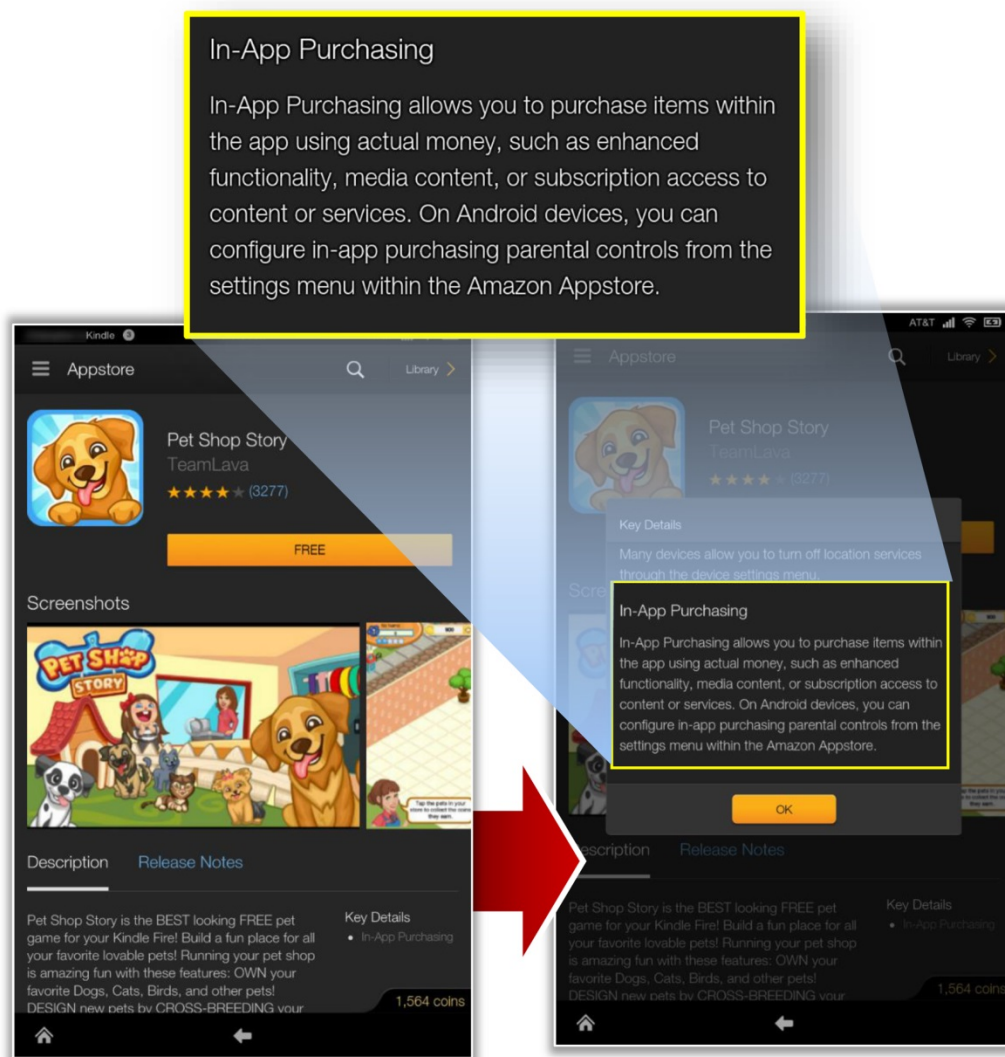
Applying settled agency principles to the allegations in the Complaint demonstrates that the in-app purchases at issue were *authorized*, and thus no cognizable harm has been alleged. Before downloading any app or incurring any fee, customers agree to Amazon’s “Conditions of Use.” Attachment A. Specifically, each Amazon customer agrees “to accept responsibility for all activities that occur under [his or her] account or password,” and further agrees that he or she is “responsible for maintaining the confidentiality of [his or her] account and password and for restricting access to [his or her] computer.” *Id.* (“Your Account”). The Conditions of Use also include the following condition: “Amazon does sell products for children, but it sells them to adults, who can purchase with a credit card or other permitted payment method. If you are under 18, you may use Amazon.com only with involvement of a parent or guardian.” *Id.* Similarly, the Amazon Appstore Terms of Use, which are linked from every app detail page and govern all app transactions, explain in-app purchasing: “We may offer digital products for sale that are intended to be accessed or used within an App, such as enhanced functionality, media content, or subscription access to content or services (‘Amazon Sold In-App Products’).” Attachment B. And Amazon sells its digital content on mobile devices through the

“legendary” and “popular” 1-Click purchasing process; any parent who downloads a book, movie, or song before turning their Kindle Fire over to their child will realize how easy purchasing is on the device.

In addition, as the Complaint concedes, when customers click an app’s icon, they are taken to a page with details about the app, including notice of the existence of in-app charges. Compl. ¶¶ 14-15. The Complaint includes a partial screenshot of an app description, *id.* ¶ 14, but as the complete description demonstrates (Attachment C-1, reprinted below), the FTC omits Amazon’s standard notice disclosing the potential for in-app charges:



In addition, as the FTC admits, in June 2013 Amazon added a “Key Details” section to the description of each app in its Appstore and included in that notice whether the app contains “In-App Purchasing.” *See* Compl. ¶ 15. When a consumer taps on “Key Details,” as indicated in the side-by-side screenshots below and in Attachment C-2, a pop-up screen appears that further explains in-app purchasing and the parental controls available to limit that purchasing:



After the consumer downloads an app, Amazon provides additional notice before an in-app charge is incurred. When a user selects content for which an in-app charge applies, Amazon displays a pop-up message indicating that a charge is about to be incurred, disclosing the amount of the charge and the basis for the charge. Compl. ¶ 18. After being presented with this information, a customer can incur an in-app charge only by affirmatively clicking either a “Get Item” or price button. *See id.* Any parent purchasing an app containing in-app purchasing or supervising a child’s usage of such an app would understand what is being offered.

Given these incorporated facts and traditional agency standards (not to mention the additional facts the FTC is aware of but did not plead), it is unsurprising that the Complaint does not allege facts showing that the in-app charges are unauthorized. Because the allegations and documents referenced in the Complaint fail to make a plausible showing that the in-app purchases by children were unauthorized, no showing of substantial injury is possible, and the Complaint should be dismissed.

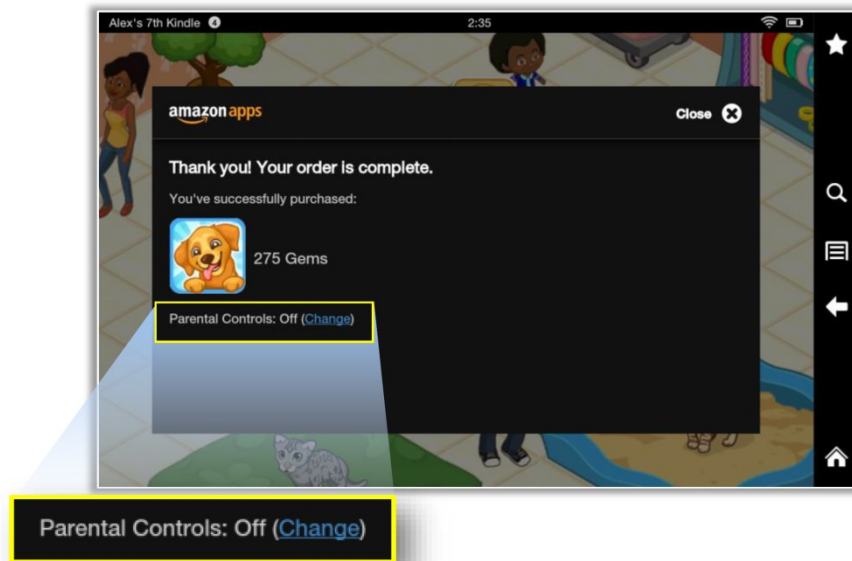
b. The Complaint Fails to Allege That Any Purported Consumer Injury Was Not Reasonably Avoidable

To satisfy this element of Section 45(n) the FTC must allege facts sufficient to show that consumers could not reasonably have avoided harm either through “anticipatory mitigation” – the exercise of “a free and informed choice” that would avoid the harm – or through subsequent mitigation once the harm occurred. *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010); *see also Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988) (“Consumers may act to avoid injury before it occurs if they have reason to anticipate the impending harm and the means to avoid it, or they may seek to mitigate the damage afterward if they are aware of potential avenues toward that end.”) (quoting *In re Orkin Exterminating Co.*, 108 F.T.C. 263, 366 (1986)). Because the Complaint’s mere recitation of this standard fails to allege facts from which the Court could infer that either form of mitigation was unavailable, the Court should dismiss the Complaint.

(i) Any Injury Was Avoidable Before Charges Were Incurred

The Complaint and the documents it incorporates demonstrate that Amazon account holders were provided a number of reasonable options to avoid alleged harm.

First, Amazon provides parents with tools to control in-app purchasing. Since Amazon first made in-app purchasing available, a user considering downloading an app with such functionality has been informed on the app description page if the app offered in-app purchasing opportunities. Compl. ¶ 15. That description also informs users that they may “configure parental controls from the device Settings menu by selecting Parental Controls” and thereby require a password for all in-app purchases or disable all in-app purchasing altogether. (See screenshot at page 16 above, Attachment C-1.) Further, since the launch of its Appstore, Amazon has concluded in-app purchases with a screen indicating whether parental controls for that device are on or off, with a button to “Change” that setting:



Attachment C-3. Amazon’s parental controls enable the account holder to avoid any charges for in-app purchasing, while still allowing a child to use apps without direct parental monitoring.

1 Second, parents who choose not to implement the controls provided by Amazon
 2 are free to use other methods to monitor their children's use of a device and to avoid in-app
 3 purchases, including techniques from the offline world. Parents can monitor their child's use of
 4 the device or direct the child to seek permission or guidance if the app offers the opportunity to
 5 make an in-app purchase. The FTC would absolve parents of the responsibility to supervise their
 6 children when using apps that may include in-app charges, despite the parents' promise to
 7 Amazon that they would do so. *See* Conditions of Use, Attachment A ("Your Account").
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14 Finally, the devices at issue function without any need to download apps
 15 containing in-app purchasing. Parents can avoid in-app charges simply by not downloading, or
 16 not allowing their children to download, apps that contain in-app purchasing. Because the
 17 description page alerts users if the app provides in-app purchasing opportunities – and has done
 18 so since launch, *see* Compl. ¶ 15 – consumers could reasonably avoid the alleged harm before
 19 incurring the charges at issue by avoiding those apps altogether.
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27 **(ii) Amazon Customers Could Reasonably Mitigate**
 28 **Any Injury After Charges Were Incurred**
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30 The Complaint also fails to allege facts sufficient to establish that parents with
 31 second thoughts about activity on their devices that they authorized could not reasonably avoid
 32 charges through post-charge mitigation efforts – that is, by seeking a refund from Amazon. The
 33 Complaint acknowledges the relevancy of refunds, but alleges in conclusory fashion that
 34 Amazon's refund practice is "unclear and confusing," apparently because Amazon's general
 35 policy is that in-app charges are final. Compl. ¶ 30. The Complaint conspicuously fails to
 36 allege, however, that even a single customer failed to obtain a refund for a regretted in-app
 37 purchase due to that general policy. *See id.* Indeed, the only facts alleged are to the contrary.
 38 Each customer identified in the Complaint was given a refund. For instance, the FTC quotes
 39 from an e-mail sent by a parent stating that his six-year-old "click[ed] a lot of buttons at random
 40 (she can't read)," and incurred "unauthorized charges." *Id.* ¶ 29. The complete exchange shows
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1 that the parent initially was “shocked that there is no password protection,” but then, in an
 2 apparent acknowledgment of the likely existence of parental controls, asked, “[I]f there is, can
 3 you please tell me how to activate it?” Attachment D, at 15. The customer then proceeded to
 4 thank the Amazon customer service representative for pointing him to the parental controls and
 5 for offering a refund. *Id.* at 12 (“Thank you! Much appreciated”). As the FTC knows from
 6 extensive pre-complaint discovery, Amazon’s policy has been to provide a refund, and
 7 instructions for using parental controls, to every customer who complained about an in-app
 8 purchase for the first time.

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Accepting all allegations of the Complaint as true – including the fact that the Complaint fails to allege that any customer was denied a requested refund for a regretted in-app charge – the Complaint fails to allege sufficient facts to make a plausible showing that consumers could not reasonably mitigate the alleged harm.

**c. The Complaint Fails to Sufficiently Allege that the
Purported Harm Outweighs Countervailing Benefits**

The FTC must also allege facts sufficient to establish that any harm to Amazon customers is “not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n). The only allegation in the Complaint concerning countervailing benefits, Compl. ¶ 34, is “a formulaic recitation of the elements of a cause of action,” *see Twombly*, 550 U.S. at 555. As the Supreme Court directs, that “will not do.” *Id.*

Section 45(n) makes clear that, as with the antitrust laws with which the FTC Act overlaps, Congress was concerned with situations where eliminating the possibility of unfairness in some circumstances would be at the cost of benefits to other consumers and to competition as a whole. Allowing this Complaint to proceed against Amazon would realize that concern here.³

³ The Commission has recognized the countervailing values at stake. It and the Department of Justice have identified the efficiency of reduced transaction costs as procompetitive. Dep’t of Justice & Fed. Trade Comm’n, Antitrust Guidelines for the Licensing of Intellectual Property § 5.5 (1995), <http://www.justice.gov/atr/public/guidelines/0558.htm>. And they have praised “competition among rivals to be the first to enter the marketplace with a desirable technology, product, or service.” Dep’t of Justice & Fed. Trade

Thus, as in *Twombly* and *Matsushita*, the statute creating the cause of action “limits the range of permissible inferences from ambiguous evidence.” *Matsushita*, 475 U.S. at 588. Here, if there are to be inferences, the most reasonable one is that the Commission is engaged in exactly the unadorned policymaking that Section 45(n) prohibits.

The Complaint does not acknowledge the benefits to consumers and competition that have resulted from in-app purchasing, nor the fact that a requirement for contemporaneous approval of each in-app purchase would eliminate convenience sought by consumers who prefer streamlined purchasing. *See Barnesandnoble.com*, 73 F. Supp. 2d at 1238 (“Considerations such as ease of use and the availability of time-saving features are significant factors in determining the relative success of on-line enterprises. Creating easy-to-use and easy-to-learn consumer interfaces is a key aspect of e-commerce competition.”). As it must, however, the Complaint does acknowledge Amazon’s customer service commitment (including the candid and even heated internal dialogue over what is best for customers) and that Amazon has revised password requirements for in-app purchasing to provide additional controls even for customers who do not activate parental controls. *See* Compl. ¶¶ 8, 19-22, 27. Over time, Amazon has responded to customer-experience data and refined its password requirements for in-app purchasing to balance the burden on it and customers of regretted purchases while maintaining as much simplicity and “frictionless” purchasing as possible for other customers. *See id.*; *see also supra* note 1 (Kindle FreeTime). Improving innovations in response to the market “often is the very essence of competition. Thus, mistaken inferences in cases such as this one are especially costly, because they chill the very conduct” Congress meant to protect in Section 45(n). *Matsushita*, 475 U.S. at 594. Consumers benefit when innovators try different things, rather than being required to anticipate all potential problems before they occur or employ a one-size-fits-all solution.

Comm’n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition 2 (2007), <http://www.justice.gov/atr/public/hearings/ip/222655.htm>.

AMAZON.COM’S MOTION TO DISMISS
(No. 2:14-CV-01038-MJP) – 22

24976-0374/LEGAL123404014.1

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1 There is no indication, much less an allegation, that the Commission has even
 2 considered these factors. In fact, even under the unprecedented “express informed consent”
 3 standard, the Complaint does not identify exactly what practices allegedly fell short and when
 4 they were in place, making it impossible to undertake the balancing required by the third element
 5 of Section 45(n).
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10 Because it fails to allege facts sufficient to establish any of the three elements
 11 Section 45(n) requires, the Complaint should be dismissed.
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15 **C. There Is No Basis for Injunctive Relief**

16 The FTC seeks prospective relief in the form of a “permanent injunction to
 17 prevent future violations of the FTC Act” by Amazon. Compl. at 11 (Prayer for Relief, A). As
 18 the Complaint acknowledges, however, Amazon’s commitment to customer service and
 19 systematic improvement of its products resulted in changes to the historical practices alleged to
 20 fall short of the new “express informed consent” standard. *See, e.g., id.* ¶ 20 (“In or around
 21 March 2012, Amazon began requiring password entry to confirm individual in-app charges
 22 exceeding \$20.”); *id.* ¶ 21 (“[In] early 2013 . . . Amazon adjust[ed] its in-app charge framework
 23 to require password entry in connection with . . . other in-app charges.”). Indeed, as the
 24 Complaint concedes, by June 2014 Amazon had “change[d] its in-app charge framework to
 25 obtain account holders’ informed consent for in-app charges on its newer mobile devices.”
 26 *Id.* ¶ 27.⁴
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39 Accordingly, even if the Complaint stated a plausible claim that Amazon violated
 40 the FTC Act in the past – it does not – there can be no claim for injunctive relief where, as here,
 41 the Complaint itself concedes that the allegedly unfair practice has already ended and is not
 42 likely to recur. *See, e.g., FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985) (“an
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48 ⁴ The changes made to newer devices were not backwards-compatible, and the FTC does not allege
 49 how the changes to older devices fell short, or even if they fell short. The FTC’s reference to “newer devices”
 50 apparently reflects the fact that transactions of less than \$1 each on the first generation of Kindle Fire devices do not
 51 require a password.

injunction will issue only if the wrongs are ongoing or likely to recur”); *FTC v. Merchant Servs. Direct, LLC*, No. 13-CV-0279-TOR, 2013 WL 4094394, at *3 (E.D. Wash. Aug. 13, 2013) (explaining that “the FTC cannot base its request for injunctive relief under [Section] 13(b) on evidence of past violations” and must demonstrate that the violations alleged in the Complaint are “likely to recur”) (alteration in original, internal quotation marks and citation omitted). The facts alleged by the Complaint demonstrate no bad faith by Amazon and, to the contrary, a commitment to improved customer experience. Those same allegations make clear that future violations are not likely to occur. Accordingly, even if the Court were to conclude that the Complaint states a plausible claim for relief, it should dismiss the request for injunctive relief.

IV. CONCLUSION

The Court should dismiss the Complaint for all the reasons set forth above.

DATED: September 8, 2014

s/ David J. Burman

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Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE

On the 8th day of September, 2014, I caused to be served upon the following, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

Jason M. Adler	—	Via hand delivery
Duane C. Pozza	—	Via U.S. Mail, 1st Class, Postage Prepaid
Federal Trade Commission	<u>X</u>	Via CM/ECF system
600 Pennsylvania Ave NW, CC-10232	—	Via Overnight Delivery
Washington, DC 20580	—	Via Facsimile
jadler@ftc.gov	—	Via Email
dpozza@ftc.gov	—	

Attorneys for Plaintiff

Laura M. Solis	—	Via hand delivery
Federal Trade Commission	—	Via U.S. Mail, 1st Class, Postage Prepaid
915 Second Avenue, Suite 2896	<u>X</u>	Via CM/ECF system
Seattle, WA 98174	—	Via Overnight Delivery
lsolis@ftc.gov	—	Via Facsimile
Attorney for Plaintiff	—	Via Email

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 8th day of September, 2014.

s/ David J. Burman

Attachment A

Attachment A

Conditions of Use

Last updated: August 19, 2011

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Attachment B

Attachment B

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Last updated: November 14, 2011

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Last updated: April 2, 2014

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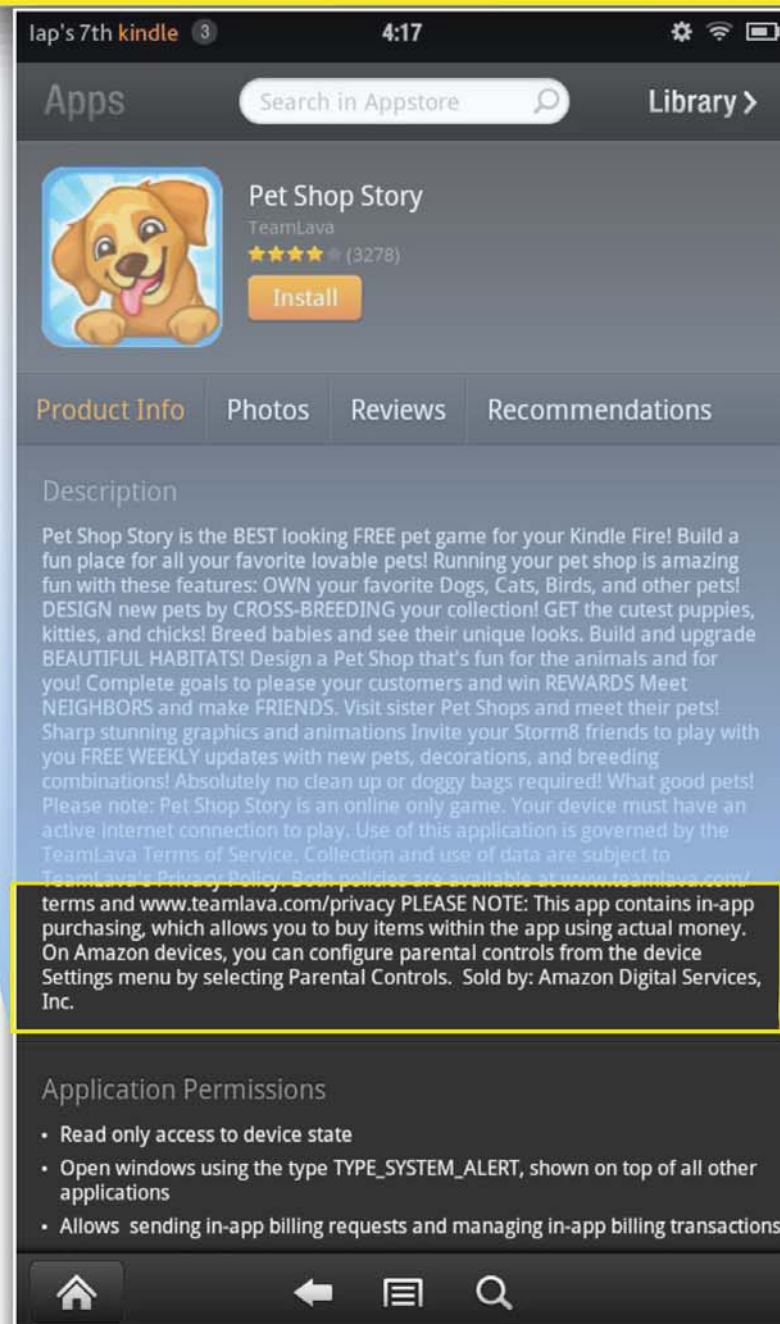
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Attachment C-1

Attachment C-1

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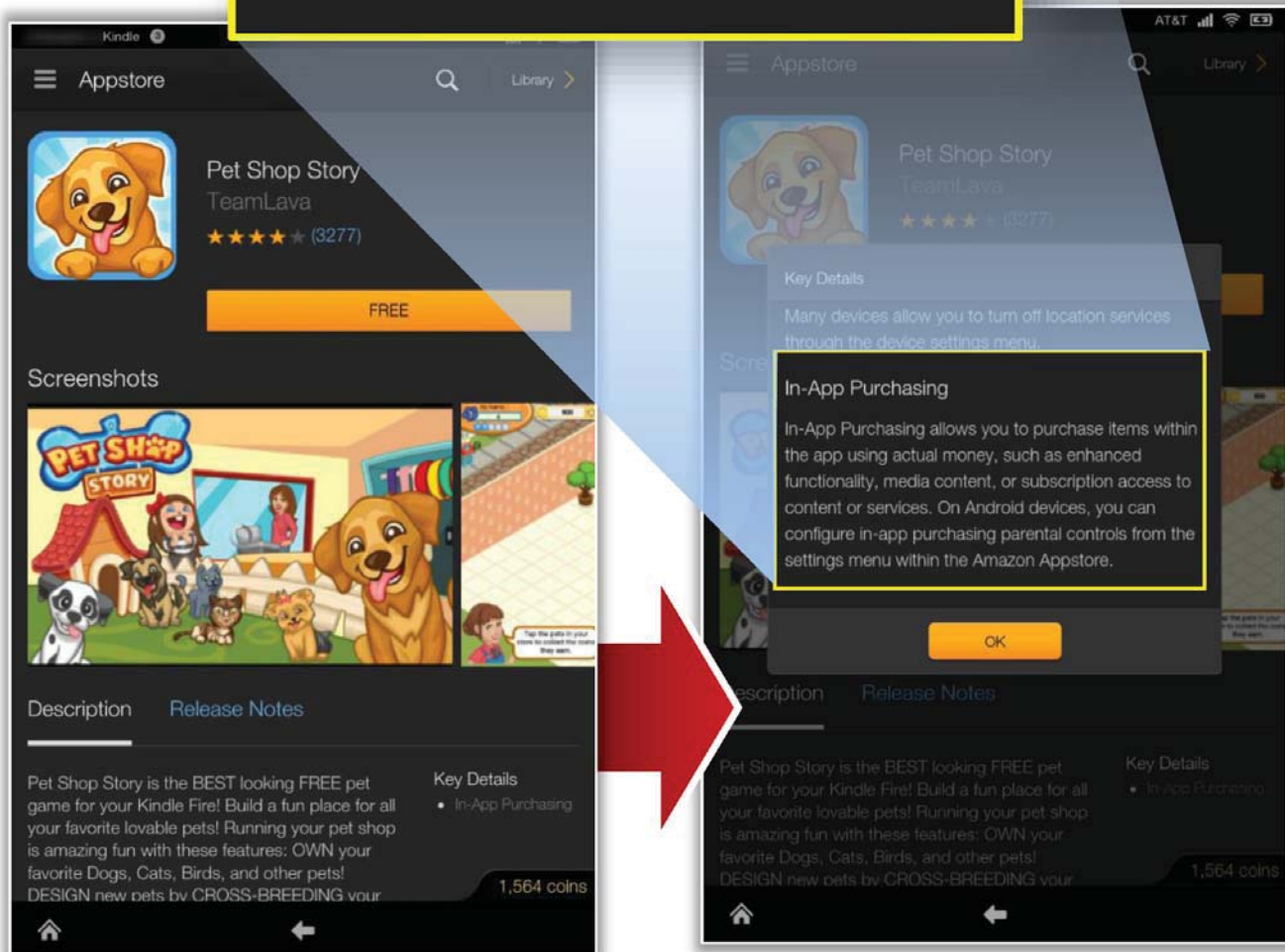


Attachment C-2

Attachment C-2

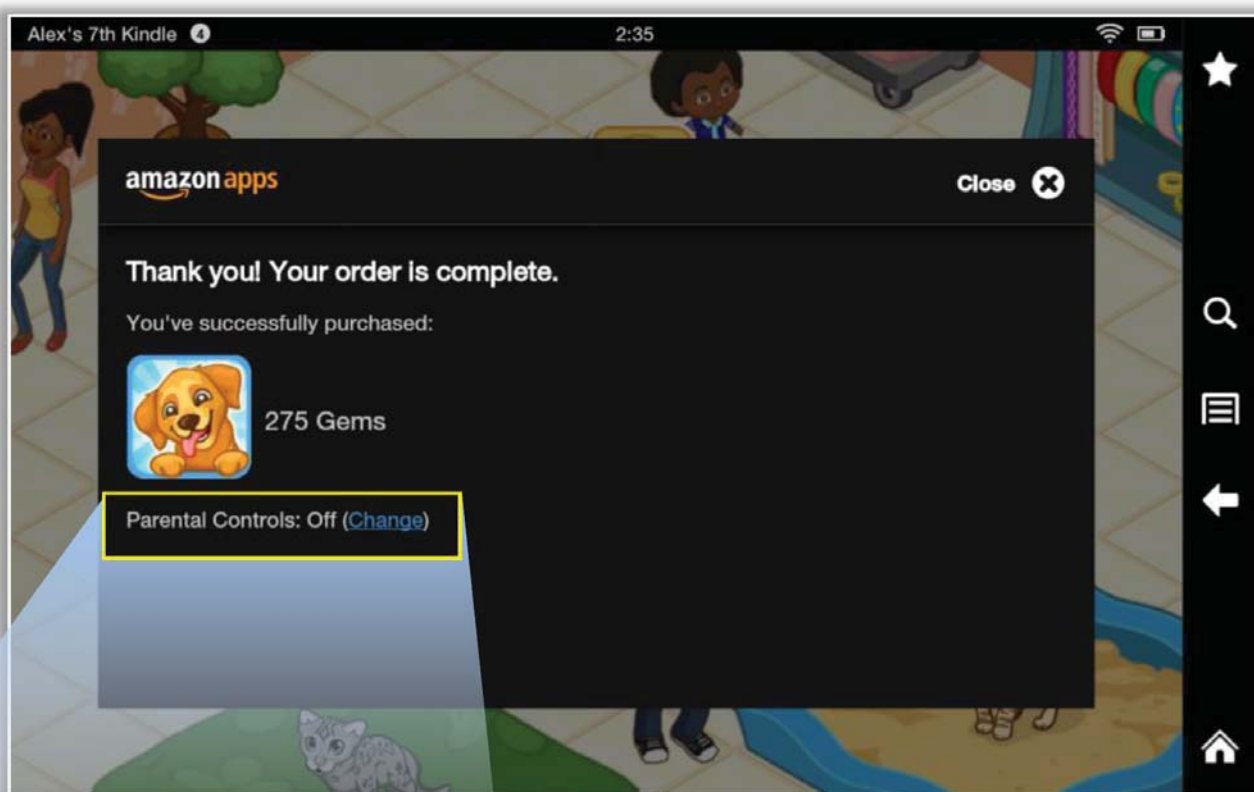
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Attachment C-3

Attachment C-3



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Attachment D

Attachment D

Complaint ¶ 28: “[O]ne Appstore reviewer . . . commented that her eight-year-old daughter thought she was purchasing the in-game coin packs with virtual currency, not real money.”

[Customer:] I am very disappointed. We are a long-time customer with "click to purchase". We purchased 3 Kindles for our children 8, 12 and 13. We trusted Amazon with our children's apps and our credit card. You game, Tap Zoo, allowed my 8 year old to change \$80+ in coins as she thought she was buying from her accumulated "virtual savings account". No where on the notice did it say this would be charged to a credit card or require a password. You know this is an issue. I would like all out money back from purchased made on 12/31 for coins to Tap Zoo.

[Chat participant name(s):] [REDACTED] Niles [REDACTED]

[Amazon:] Hello, my name is Niles. I'm sorry for the inconvenience, [REDACTED]

[Customer:] Hello Niles. I hope you can read through all my spelling errors.

[Amazon:] Could you please let me know the order number?

[Customer:] There were 17 - which would you like first?

Subject	Received
Your Amazon.com Order (D01-0727604-2698563)	Sat 12/31
Your Amazon.com Order (D01-9132874-0327358)	Sat 12/31
Your Amazon.com Order (D01-1522082-0516151)	Sat 12/31
Your Amazon.com Order (D01-8392171-0573745)	Sat 12/31
Your Amazon.com Order (D01-1755207-2045731)	Sat 12/31
Your Amazon.com Order (D01-8277116-9204116)	Sat 12/31
Your Amazon.com Order (D01-9617247-8240909)	Sat 12/31
Your Amazon.com Order (D01-7014200-4925743)	Sat 12/31
Your Amazon.com Order (D01-5665875-5012146)	Sat 12/31
Your Amazon.com Order (D01-7700809-2640903)	Sat 12/31
Your Amazon.com Order (D01-9277792-5712925)	Sat 12/31
Your Amazon.com Order (D01-7338320-0119339)	Sat 12/31
Your Amazon.com Order (D01-7164259-1424943)	Sat 12/31
Your Amazon.com Order (D01-7018928-9341717)	Sat 12/31
Your Amazon.com Order (D01-2850454-3514534)	Sat 12/31
Your Amazon.com Order (D01-7863140-0679326)	Sat 12/31

[Amazon:] Thank you.

[Customer:] Sorry - 16 not 17 orders

[Amazon:] Not a problem, [REDACTED]. I will go ahead and cancel all these order's for you. With your permission, shall I cancel all the order's which were placed on December 31, 2011 ?

[Customer:] yes, please. How do I get the credit back for all the kid's \$20.00 gift cards and on my credit card? thanks so much for your help

[Amazon:] I'm sorry, [REDACTED] I see that a member of our Amazon Appstore team will need to help you with this these order's.

[Customer:] can you transfer me there or how do i get to them?

[Amazon:] For an immediate callback, contact us through the website via the "Contact us" button here: <https://www.amazon.com/gp/mas/your-account/myapps> . If your country isn't listed or you're unable to take advantage of this feature, you can call directly at 1-866-749-7771. Amazon Appstore support is available between the hours of 6 a.m. and 10 p.m. PST, 7 days a week.

[Customer:] ok, thanks

[Amazon:] You are welcome. have a good day.

[Customer:] I will call now.

[Amazon:] And you the kindle fire is updated to latest software then you can keep a lock to the WIFI so that internet cannot be accessed. Is there anything else I can help you with today?

Your chat has been idle for 1 minute.

[Amazon:] If there isn't anything else I can help you with, I'll need to disconnect this chat. Thank you for contacting Amazon. We hope to see you again. Nileshe

From: Amazon.com Customer Service <cust.service03@amazon.com>

To: [REDACTED]

Subject: Your Amazon.com Kindle Inquiry

Content-Type: text/plain; charset=UTF-8

Hello,

I just wanted to send you a quick follow-up e-mail on our chat discussion.

I'm really sorry for the inconvenience caused in this case.

As per our discussion, I checked this for you and see that a member of our Amazon Appstore team will need to help you with this these order's.

however, they don't have chat support. For an immediate callback, contact us through the website via the "Contact us" button here: <https://www.amazon.com/gp/mas/your-account/myapps> .

If your country isn't listed or you're unable to take advantage of this feature, you can call directly at 1-866-749-7771. Amazon Appstore support is available between the hours of 6 a.m. and 10 p.m. PST, 7

days a week.

For your reference, With the latest software update available for Kindle Fire, 6.2.1, you can enable restrictions to control Wi-Fi access on your Kindle Fire.

Tap the Quick Settings icon, then More, then Restrictions to set your password. You'll then see the option to enable Password Protected Wi-Fi on your Kindle Fire.

Enabling Password Protected Wi-Fi turns off Wi-Fi on your device and will require your password to reactivate Wi-Fi. Parents may use this feature to prevent children from purchasing content without their permission or from browsing any inappropriate online content. You will see a Key icon to the right of the Quick Settings icon whenever Password Protected Wi-Fi is enabled and Wi-Fi is off.

To ensure your Kindle Fire has the latest software update, visit www.amazon.com/kindlesoftwareupdates

Kindle Fire also supports parental controls for in-app purchases through the Amazon Appstore.

For further queries, You can reach us by chat or phone directly and toll free from many countries. Learn how on our Kindle Support website at:

Complaint ¶ 28: "A consumer . . . explained that her daughter 'thought she was paying with acorns, but it seems to be hitting my credit card.'"

[Customer:] My daughter just purchased a bunch of stuff on her kindle

[Chat participant name(s):] [REDACTED] Amazon [REDACTED]

[Amazon:] Hello, my name is Kelly. I'll be happy to help you. What can I do for you today?

[Customer:] She thought she was paying with acorns, but it seems to be hitting my credit card. Is there anything I can do to reverse what she did?

[Amazon:] I will be happy to check into that. Can you hold just a moment please?

[Customer:] Yes. OK.

[Amazon:] Thank you for waiting [REDACTED]. A member of our Kindle team will need to help you with this. Can you please hold while I transfer you? One of our Kindle Specialists will assist you very shortly.

[Customer:] Yes, thank you.

[Amazon:] Thank you so much. It should be just a moment.

[Chat participant name(s):] [REDACTED] Amazon Jammie [REDACTED]

[Amazon:] Hello, my name is Jammie. I'm sorry about the accidental orders made by your daughter. Don't worry, I'll check on these and see what option we can do. For security purposes, may I have the name on your account please?

[Customer:] [REDACTED]

[Amazon:] Thanks, [REDACTED]. Just to be sure, the accidental purchases are apps?

[Customer:] I think she bought stuff in the ice age app.

[Amazon:] Ice Age Village I see. To better assist you with the option of refunding the apps, a member of our Amazon Appstore team will need to help you with this. Please hold while I transfer you. One of our Amazon Appstore Specialists will assist you shortly.

[Customer:] OK

[Chat participant name(s):] [REDACTED] Jammie Narasimha [REDACTED]

[Amazon:] We just set the parental controls. Can you remove the charges?

[Amazon:] Hello [REDACTED], my name is Narasimha. I'll be happy to help you today. Sure, could you please provide me the order numbers.

[Customer:] D01-0464934-8344163 D01-5947527-5147304 D01-2030713-8817721 D01-3476085-2488103 D01-5239700-3035356 I think that's it.

[Amazon:] Thank for the confirmation [REDACTED]. I've issued refunds on all these orders, but these refunds are issued as a one time exception.

[Customer:] Thank you.

[Amazon:] You're Welcome [REDACTED]. We hope to see you again. Have a great day.

Please click the "End Chat" link to close this window.

[Chat participant name(s):] [REDACTED]

#I13998— Friday, November 23, 2012 6:37 PM (PST)

Complaint ¶ 28: "It's not a hack, but nearly as bad: it's an in-game purchase. A user, such as a child, can easily misinterpret the option to spend actual money as just part of the game."

Hello [REDACTED]

I'm sorry about the unexpected charges on your account for a game.

It is not a hack, but nearly as bad: it's an in-game purchase. A user, such as a child, can easily misinterpret the option to spend actual money as just a part of the game.

As a standard policy, Amazon Appstore purchases are not returnable, but because you may not have realized you were spending real money in your game, I have issued a refund for \$19.98 for two purchases of "Cash 88 (+10%)".

This refund should go through within the next 2 to 3 business days and will appear as a credit on your next credit card billing statement.

Once yesterday morning, and once yesterday evening, within the game "Top Girl" an option was selected that resulted in more credits for you to get more outfits or something, and for those credits, you were charged \$9.99. I believe there are options for even more money, so you may want to be careful.

PLEASE NOTE: This app lets you purchase digital content using actual money. You can configure parental controls for in-app purchases, which will require your Amazon account password or a 4-digit PIN, by going to the Settings menu from within the Amazon Appstore.

Please let us know if we can help with anything else. You can reach us by phone directly and toll free from many countries by clicking the Contact Us option on our Help pages at:

http://www.amazon.com/gp/help/customer/display.html?nodeId=200551840&ref=sv_mas_5

Contacting us through the website allows you to verify security before a call is placed and ensures we have your account information ready when we call you. If your country isn't listed or you're unable to take advantage of the Contact Us feature, you can call us directly at 1-866-321-8851 or 1-206-266-0927 if you're calling from outside the U.S.

I hope this helps. We look forward to seeing you again soon.

-

Did I solve your problem?

If yes, please click here:

http://www.amazon.com/rsvp-y?c=*****

If no, please click here:

http://www.amazon.com/rsvp-n?c=*****

Please note: this e-mail was sent from an address that cannot accept incoming e-mail.

To contact us about an unrelated issue, please visit the Help section of our web site.

Best regards,

David R.

Amazon.com

Your feedback is helping us build Earth's Most Customer-Centric Company.

<http://www.amazon.com/your-account>

12/25/11 08:24:09

Your Name: [REDACTED]

Comments: Hello,

i just noticed that some app call 88 Cash showed up as if i purchased it twice. it actually showed up twice for \$9.99. When i tried to find it, it is not registered in the list of apps i have actually purchased and the only place i can find it is in the previous digital orders, not my list of apps. i am afraid this is some sort of a hack. please advise what to do?

[REDACTED]

Completed Digital Orders

Order Date: December 24, 2011

Order #: D01-7563285-7461968

Recipient: [REDACTED]

Items:

1 of: 88 CASH (+10% More!) [Apps for Android]

Order Date: December 24, 2011

Order #: D01-2915803-3481120

Recipient: [REDACTED]

Items:

1 of: 88 CASH (+10% More!) [Apps for Android]

```
<contact>
  <coi></coi>
  <cust_name>[REDACTED]</cust_name>
  <timestamp>1324830248</timestamp>
  <subject>Other question</subject>
  <cust_email>[REDACTED]</cust_email>
  <skippedSignIn></skippedSignIn>
  <form_name>Contact Us</form_name>
  <customer_id>[REDACTED]</customer_id>
  <session_id>190-4049644-8842222</session_id>
```

<USER_AGENT>Mozilla/5.0 (Windows NT 6.1; WOW64) AppleWebKit/535.7 (KHTML, like Gecko)
Chrome/16.0.912.63 Safari/535.7</USER_AGENT>
<customer_authenticated>true</customer_authenticated>
<remoteAddress>71.183.62.87</remoteAddress>
</contact>

#I2295--Sunday, December 25, 2011 1:57 PM (PST)

Complaint ¶ 29: “[O]ne consumer whose six-year-old ‘click[ed] a lot of buttons at random (she can’t read)’ . . . was ‘shocked that there is no password protection’ for in-app charges.”

Thank you! Much appreciated.

-----Original Message-----

From: Amazon.com Customer Service [mailto:cust.service03@amazon.com]

Sent: Sunday, March 04, 2012 2:50 PM

To: [REDACTED]

Subject: Your Amazon.com Inquiry

Hello,

I understand that with 1-Click ordering, it may be easy to make an unintended purchase.

I've checked your account and see that you've purchased free applications such as "Fashion Story" and "Bakery Story" and "Restaurant Story." In the game there is an option to purchase credit using real money within the game such purchases are called as in-app purchases. The orders which you're referring to are purchased credit from that game.

I understand that you're not aware of this. As a standard policy, Appstore purchases aren't returnable. However, because of the circumstances, I've made an exception and issued a refund for "24 Gems - 20% Discount" and "105 Gems" and "105 Gems - 20% Discount" in the amount of \$3.99 and \$19.99 and \$15.99.

This refund should go through within the next 2 to 3 business days and will apply to the payment method used for the original purchase. Once processed, you can view the refund here:

<https://www.amazon.com/gp/digital/your-account/order-summary.html?&orderID=D01-0225688-7293077>

<https://www.amazon.com/gp/digital/your-account/order-summary.html?&orderID=D01-3429526-1693009>

<https://www.amazon.com/gp/digital/your-account/order-summary.html?&orderID=D01-1032708-3933039>

Regarding blocking accidental purchases:

With the latest software update available for Kindle Fire, you can enable restrictions to control Wi-Fi access on your Kindle Fire.

Tap the Quick Settings icon, then More, then Restrictions to set your password. You'll then see the option to enable Password Protected Wi-Fi on your Kindle Fire.

Enabling Password Protected Wi-Fi turns off Wi-Fi on your device and will require your password to reactivate Wi-Fi. Parents may use this feature to prevent children from purchasing content without their permission or from browsing any inappropriate online content. You will see a Key icon to the right of the Quick Settings icon whenever Password Protected Wi-Fi is enabled and Wi-Fi is off.

If you forget your password and enter the wrong password four times in row, you'll be prompted to reset your Kindle Fire to the factory default settings to regain access. Tap "OK reset." Resetting your Kindle Fire to the factory default settings will delete all content on your device and you'll need to register it again before downloading items from your Amazon account.

To ensure your Kindle Fire has the latest software update, visit www.amazon.com/kindlesoftwareupdates

Kindle Fire also supports parental controls for in-app purchases through the Amazon Appstore.

Regarding blocking in-app purchases:

To turn off in-app purchasing on your Android device, open Amazon Appstore for Android and tap the Menu icon. Select Settings and tap In-App Purchasing.

Uncheck the box next to "Allow In-App Purchasing" to prevent your device from completing in-app purchases.

However, if you still have any questions please write back to us using the link below so that we can assist you.

<http://www.amazon.com/gp/help/contact-us/general-questions.html>

I hope you found this information helpful! We're happy to help if you need further assistance.

Did I solve your problem?

If yes, please click here:

http://www.amazon.com/rsvp-y?c=*****

If no, please click here:

http://www.amazon.com/rsvp-n?c=*****

Please note: this e-mail was sent from an address that cannot accept incoming e-mail.

To contact us about an unrelated issue, please visit the Help section of our web site.

Best regards,

Krishna M

Amazon.com

Your feedback is helping us build Earth's Most Customer-Centric Company.

<http://www.amazon.com/your-account>

----- Original message: -----

Hello – it appears that my 6 year old daughter was playing my Kindle and has been clicking a lot of buttons at random (she can't read). In doing so, she made several in-app purchases:

- D01-0225688-7293077 - \$3.99
- D01-3429526-1693009 - \$19.99
- D01-1032708-3933039 - \$15.99

These purchases all took place in the last hour – can you please refund these transactions?

I am shocked that there is no password protection on the Kindle... if there is, can you please tell me how to activate it? A child shouldn't be able to make unauthorized purchases!

Thanks,

■

From: Amazon.com [mailto:digital-no-reply@amazon.com]

Sent: Sunday, March 04, 2012 1:24 PM

To: ■

Subject: Your Amazon.com Order (D01-0225688-7293077)

[Description: Image removed by sender. Amazon.com
Logo]<http://www.amazon.com/gp/homepage.html/ref=cs_ae_amp>

[Description: Image removed by sender. Your Account]

Thanks for your order, ■

Did you know you can view and edit your orders online, 24 hours a day? Visit Your
Account<http://www.amazon.com/your-account>.

Reading from a mobile device? Open the Amazon Appstore for
Android<http://www.amazon.com/gp/mas/get-appstore/android/> or download it to your device.

Order Information:

E-mail Address: ■<mailto:■>

Billing Address:

[REDACTED]

[REDACTED]

[REDACTED]

United States

Phone: [REDACTED]

Order Grand Total: \$3.99

Earn 3% rewards on your Amazon.com orders with the Amazon Visa Card. Learn
More<http://www.amazon.com/visa>

Order Summary:

Details:

Order #:

D01-0225688-7293077<http://www.amazon.com/gp/digital/your-account/order-
summary.html?orderId=D01-0225688-7293077>

Subtotal of items:

\$3.99

Total before tax:

\$3.99

Tax Collected:

\$0.00

Total for this Order:

\$3.99

The following item is available now. See all your apps and registered devices in Your Apps & Devices<https://www.amazon.com/gp/mas/your-account/myapps?ie=UTF8&ref=mas_ord_cfm>;

24 Gems - 20% Discount [Apps for Android] \$3.99 Sold By: Amazon Digital Services, Inc.

The charge for this order will appear on your credit card statement from the merchant 'Amazon Digital Svcs'.

You can review your orders in Your Account<<http://www.amazon.com/gp/css/homepage.html/ref=cs-ae-yr>>. If you've explored the links on that page but still have a question, please visit our online Help Department<<http://www.amazon.com/gp/help/customer/display.html?nodeId=515724>>;

Please note: This e-mail was sent from a notification-only address that cannot accept incoming e-mail. Please do not reply to this message.

Thanks again for shopping with us.

Amazon.com<http://www.amazon.com/gp/homepage.html/ref=cs_ae_yr>;

Earth's Biggest Selection

[Description: Image removed by sender. Unsubscribe Icon] Prefer not to receive HTML mail? Click here<<http://www.amazon.com/communications>>;

#I3141—no date

Complaint ¶ 29: "Another consumer whose daughters incurred \$358.42 in unauthorized charges complained that Amazon allowed the charges without any 'step that requires a password to validate payment information.'"

Thanks Noel, I appreciate your help; I need more help.

As you mentioned, the charges came from an Android App named Top Girl. This is a 'free' app that we downloaded for our girls to play. It is a girls dress-up game, in which you go into stores and "purchase" clothes for the girl you have on the game. However!, when you "purchase" the clothes, you are USING REAL MONEY!!! Obviously, there are some issues with how this app works. I find it unacceptable that this game allows purchases to be made without a payment prompt/step that requires a password to validate payment information. This makes no sense to me whatsoever!!

I need your help!

We had NO IDEA that this app had any potential to have charges related to it (or we would NOT have downloaded it!), hence we contacted Amazon as well as our bank as soon as we became aware of the charges, because we thought someone had stolen our information. It was a free app with no payment prompts. As our girls were playing the game, they accumulated the following charges on the following dates:

1/3/12\$24.99\$24.99\$98.46 (\$1.53 came off an Amazon gift card; the charges were \$99.99)\$99.99

1/6/12\$9.99\$99.99This is a total of \$358.42!!!

I think it is a misrepresentation and a trap set by the company that 'sells' this game. Can you help me? I would like to get the charges reversed as soon as possible (I need that money to pay bills!).I would like the company to be investigated for their practices, so this doesn't happen to anyone else (I'm sure it has happened already!).Please help!Your response is appreciated.

Regards, [REDACTED]

> Date: Fri, 6 Jan 2012 02:56:08 +0000

> From: cs-reply@amazon.com

> To: [REDACTED]

> Subject: Your Amazon.com Inquiry

>

> Hello [REDACTED]

>

> As I was filling out the forms for our Billing Department, I realized I needed a few more pieces of information from you for their purposes.

>

> I tried to reach you by phone, but was unable to do so. I apologize, but I will need you to please call us back at 1-866-216-1072.

>

> We will need the full credit card number of the card used to buy the unauthorized digital orders. We may also need some of your bank's information.

>

> I want to make sure that closing your Amazon.com account won't cause problems with any open transactions or other websites you might visit.

>

> Here are some things to keep in mind:

>

> -- If you use your Amazon.com log-in on other sites (e.g., Endless.com, Audible.com, certain

international Amazon sites, etc.), you'll also lose access to those accounts.

> -- Any open orders you have will be canceled.

> -- All subscriptions will be canceled (Amazon Prime, Subscribe and Save, etc.).

> -- If you have a remaining Amazon.com Gift Card balance, you won't have access to use the funds.

> -- Returns and refunds can't be processed for orders on closed accounts.

> -- You won't be able to re-download the Kindle content purchased on this account.

> -- You won't be able to access Amazon Cloud Drive content, Amazon Instant Video content, or Amazon Appstore content.

> -- Your Amazon Payments account will be closed and can't be reopened.

> -- You'll no longer have access to your Associates, Amazon Web Services, Seller, Author Central, and/or Mechanical Turk accounts.

> -- If you have an Amazon Web Services account, please contact AWS customer support for assistance with closing your AWS account :

> <https://aws-portal.amazon.com/gp/aws/html-forms-controller/contactus/aws-account-and-billing>

>

> If you still want to close your Amazon.com account after reviewing the items above, please write back by visiting this link and state that you want to close your account:

>

> <https://www.amazon.com/gp/help/rsvp/rsvp-mi.html?q=acc1>

>

> I hope this helps. We look forward to hearing from you.

>

> Thank you for your recent inquiry. Did I solve your problem?

>

> If yes, please click here:

> http://www.amazon.com/gp/help/survey?p=*****&k=hy

>

> If no, please click here:

> http://www.amazon.com/gp/help/survey?p=*****&k=hn

>

>

>

> Best regards,

>

> Noël H-L

> <http://www.amazon.com>

> =====

>

Hello [REDACTED]

I'm sorry to hear that several orders for Top Girl cash were accidentally placed on your account.

I've went ahead and issued seven refunds in the amount of \$9.99, \$99.99, \$24.99, \$24.99, \$99.99, \$99.99, and \$9.99.

These refunds should go through within the next 2 to 3 business days and will apply to the payment method used for the original purchases.

To set up parental controls for in-app purchases, open the Amazon Appstore, tap the Menu icon, tap "Settings," then tap "Parental Controls." From this screen you can either require your Amazon.com password to make in-app purchases or set up a 4-digit PIN.

Once you select this setting, you'll have to enter your password or PIN before all in-app purchases.

If you want to turn off in-app purchasing altogether, please open the Amazon Appstore for Android and tap the Menu icon. Select Settings and tap In-App Purchasing.

Uncheck the box next to "Allow In-App Purchasing" to prevent your device from completing in-app purchases.

If you have any additional questions or concerns, feel free to contact us. Amazon Appstore specialists can be reached 24 hours a day, seven days a week at 1-866-749-7771 or send us an email using the following link:

<http://www.amazon.com/help/amazonappstore>

I hope this helps! We look forward to seeing you again soon.

Did I solve your problem?

If yes, please click here:

http://www.amazon.com/rsvp-y?c=*****

If no, please click here:

http://www.amazon.com/rsvp-n?c=*****

Please note: this e-mail was sent from an address that cannot accept incoming e-mail.

To contact us about an unrelated issue, please visit the Help section of our web site.

Best regards,

Stephanie

Amazon.com

Your feedback is helping us build Earth's Most Customer-Centric Company.

<http://www.amazon.com/your-account>

#I2369—Tuesday, January 10, 2012 8:20 AM (PST)
